

124 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Sword Energy Limited
and Eagle Rock Exploration, Ltd.

Docket No. CP08-90-000

ORDER ISSUING PRESIDENTIAL PERMIT AND GRANTING AUTHORIZATION
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued August 5, 2008)

1. On March 11, 2008, Sword Energy Limited (Sword) and Eagle Rock Exploration, Ltd. (Eagle Rock) (collectively, applicants)¹ filed an application for a Presidential Permit and authorization under section 3 of the Natural Gas Act (NGA) for Eagle Rock to acquire from Sword and continue operating pipeline facilities used to import natural gas from Canada.² For the reasons discussed below, we will grant the requested authorizations to Eagle Rock.

¹ Sword and Eagle Rock are Canadian corporations engaged in the exploration, development and production of oil and natural gas.

² Authorization under section 3 of the Natural Gas Act (NGA) is necessary for the siting, construction and operation of facilities to import or export natural gas. Pursuant to Executive Order No. 10485, dated September 3, 1953, as amended by Executive Order No. 12038, dated February 3, 1978, a Presidential Permit also must be obtained for the portion of an import or export facility crossing one of the United States' international borders. In Delegation Order No. 00-004.00A, effective May 16, 2006, the Secretary of Energy renewed the delegation of authority to the Commission to grant or deny authorization under section 3 of the NGA and, if applicable, a Presidential Permit for the siting, construction and operation of import and export facilities. The Commission has no authority to approve or disapprove applications to import or export natural gas. The Secretary of Energy has delegated such authority to the Department of Energy's Assistant Secretary of Fossil Energy.

I. Background and Proposal

2. In 2003, Regent Resources Ltd. (Regent) constructed a meter station and a 2,300-foot long, 4-inch diameter pipeline beginning in the Coutts area of Alberta, Canada and extending to the United States/Canadian border to interconnect with a 19,400-foot long, 4-inch diameter pipeline constructed in Montana at the same time by Regent's subsidiary, Regent Resources Inc. Both the Canadian pipeline facilities and the Montana pipeline facilities were constructed in order to transport unprocessed gas from shut-in gas wells in Alberta, Canada, and to tie in with EnCana Corporation's natural gas gathering system and processing facility in Montana.

3. The facilities in Montana are gathering facilities exempt from the certification requirements in section 7 of the Natural Gas Act (NGA). However, Regent applied for and was granted a Presidential Permit and NGA section 3 authorization for the first 30 feet of 4-inch diameter pipeline on the U.S. side of the border.³ This 30 feet of pipeline constituting the import/border crossing facility is located in Glacier County, Montana, about sixteen miles west of Sweetgrass in Toole County, Montana.⁴

4. In 2006, Sword purchased the Canadian and Montana facilities, and the Commission granted Sword authorization under section 3 of the NGA and a Presidential Permit to acquire and operate the import/border crossing facility.⁵

5. The applicants state that there currently is no flow of gas through the import/border crossing facility. However, Eagle Rock has acquired Sword, and Eagle intends to explore and develop additional natural gas reserves. Therefore, the applicants request that the Commission grant Eagle Rock authorization under section NGA section 3 and a Presidential Permit to operate the import/border crossing facility.

II. Public Notice and Intervention

6. Notice of Sword and Eagle Rock's application in Docket No. CP08-90-000 was published in the *Federal Register* on March 24, 2008 (73 Fed. Reg. 15510). No notices of intervention, motions to intervene, or protests to the application were filed.⁶

³ *Regent Resources Ltd.*, 102 FERC ¶ 61,307 (2003).

⁴ More specifically, the import/border crossing facility is located at the Canada/United States border at the NW corner of Section 1, Township 37N, Range 5W in the State of Montana.

⁵ *Regent Resources Ltd. and Sword Energy Limited*, 117 FERC ¶ 61,036 (2006).

⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

III. Consultation with Secretaries of State and Defense

7. On April 18, 2008, pursuant to Executive Order 12038, the Commission sent letters to the Secretaries of State and Defense seeking their recommendations on the applicants' request for issuance of a Presidential Permit authorizing Eagle Rock's operation of the subject border crossing. By letters dated May 27, 2008 and June 12, 2008, the Secretaries of State and Defense, respectively, indicated that they have no objections to the proposed Presidential Permit for Eagle Rock.

IV. Discussion

8. Pursuant to Department of Energy Delegation Order No. 00-004.00A, effective May 16, 2006, the Commission has delegated authority to issue Presidential Permits⁷ and grant NGA section 3 authorizations.

9. Section 153.9 of the Commission's regulations provides that prior Commission approval is necessary for the transfer of facilities authorized under section 3 of the NGA. Further, Article 8 of Sword's 2006 Presidential Permit states that neither the Permit nor any of the facilities covered by the Permit may be voluntarily transferred.

10. The applicants state that there currently is no flow of gas through the subject import/border crossing facility and that there are no currently effective service agreements with third-parties. Therefore, the applicants' proposal will not adversely affect any services currently being provided through the facility. Further, Eagle Rock states that it intends to explore and develop additional natural gas reserves, and that it will utilize the facility to import natural gas from Canada. Eagle Rock may only use the facility to import natural gas volumes that have been approved by the Department of Energy's Assistant Secretary of Fossil Fuels. In view of these considerations, we find that the applicants' proposal is consistent with the public interest because it will provide access to supplies of natural gas and promote national economic policy by reducing barriers to foreign trade.

11. Presidential Permits and authorizations pursuant to section 3 of the NGA are non-transferable,⁸ as proposed in the joint application. Therefore, the Commission will issue a new Presidential Permit and new NGA section 3 authorization to Eagle Rock.

⁷ The Presidential Permit is attached as the appendix to this order.

⁸ 18 C.F.R. § 153.9(a) (2008). *See, e.g., Calpine Corporation and Otay Mesa Generating Company, LLC*, 106 FERC ¶ 61,075, at P 11-12 (2004), and *Regent Resources Ltd. and Sword Energy Limited*, 117 FERC ¶ 61,036 (2006) (Article 8 of Sword's Presidential Permit in the appendix).

12. The applicants' proposal does not involve the construction, abandonment or modification of any facilities. Therefore, we find that no environmental concerns are raised by the application. For the same reason, we further find that granting Eagle Rock authorization to continue operating the existing import/border crossing facility would not constitute a major federal action significantly affecting the quality of the human environment requiring the preparation of an environmental assessment or environmental impact statement.⁹

13. The Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) A Presidential Permit and NGA section 3 authority are granted to Eagle Rock to operate and maintain the subject import/border crossing facility, subject to the conditions in the Presidential Permit.

(B) Eagle Rock shall sign and return the testimony of acceptance of all provisions, conditions and requirements of the Presidential Permit to the Secretary of the Commission within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ See *Montana Power Company*, 93 FERC ¶ 61,149, at 61,466 (2000).

Appendix

PRESIDENTIAL PERMIT AUTHORIZING EAGLE ROCK EXPLORATION LTD TO ACQUIRE, OPERATE, AND MAINTAIN FACILITIES FOR THE IMPORTATION OF NATURAL GAS AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA IN GLACIER COUNTY, MONTANA

FEDERAL ENERGY REGULATORY COMMISSION DOCKET NO. CP08-90-000

(Issued August 5, 2008)

Sword Energy Limited (Sword) and Eagle Rock Exploration Ltd. (Eagle Rock) (Permittees) filed on March 11, 2008, in Docket No. CP08-90-000 an application pursuant to Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, requesting that the Commission issue an order under section 3 of the NGA and a Presidential Permit authorizing Eagle Rock (Permittee) to acquire from Sword certain pipeline and related facilities and to operate and maintain such facilities, as described in Article 2 below, for the importation of natural gas from Canada.

By letter dated May 27, 2008, the Secretary of State, and by letter dated June 12, 2008, the Secretary of Defense, favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, the Secretary of Energy's Delegation Order No. 00-004.00A, and the Commission's Regulations, permission is granted to Permittee to operate and maintain the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission upon proper application therefore.

Article 2. The following facilities are subject to this Permit:

A 30-foot long segment of pipeline extending across the Canada/United States border at the NW corner of Section 1, Township 37N, Range 5W in the State of Montana for a distance of 30 feet. The 30-foot long border crossing facility is connected on the Canadian side of the border to 4-inch diameter pipeline extending 2,300 feet directly north to a gas meter station in LSD 8 of section four (4), Township one (1), Range sixteen (16), West of the fourth (4th) Meridian in the Province of Alberta. On the United States side of the border, the 30-foot border crossing facility interconnects with 4-inch diameter pipeline which runs in a southeasterly direction for a distance of approximately 19,400 feet and ties in with an existing third-party gathering system and processing facility in northern Montana at SE ¼ section 8, Township 37N, Range 4W downstream of the third-party North Moulton compressor station.

Article 3. The natural gas facilities subject to this Permit, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas imported from Canada only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefore. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or exported, or the facilities described herein, as the Commission

may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacements.

Article 9. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____ has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the __ day of _____, _____, a certified copy of the record of which is attached hereto.

Eagle Rock Exploration Ltd.

By _____

(Attest)

Executed in triplicate